

K R A S K I N, L E S S E & C O S S O N, L L C
ATTORNEYS AT LAW
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

TELEPHONE (202) 296-8890

TELECOPIER (202) 296-8893

March 24, 2003

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445-12th Street, SW, Room TWB-204
Washington, DC 20554

Re: Notice of Written Ex Parte Communication, In the Matter of Rules and Regulations
Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278,
CC Docket No. 92-90

Dear Ms. Dortch:

The purpose of this letter is to discuss further the position taken by the “Concerned Telephone Companies” in their December 9, 2002 “Comments” filed in response to the Commission’s September 18, 2002 “Notice of Proposed Rulemaking and Memorandum Opinion and Order” (“NPRM”) herein. (A list of the Concerned Telephone Companies is appended to this letter.) In its NPRM, the Commission “tentatively concluded,” at Paragraph 19, that consumers who consent to the use of their “Customer Proprietary Network Information” (“CPNI”) nevertheless could not be marketed to by telephone if they joined a telemarketing “do-not-call” list. The Concerned Telephone Companies believe this conclusion is legally and constitutionally wrong, unfair to affected carriers, illogical and confusing to consumers, and it so indicated in its Comments.

On March 14, 2003, the Commission’s revised CPNI rules took full effect. These provide a more flexible approach to allowing carriers to obtain customer consents for the use of their CPNI to market communications-related services. Specifically, a new “opt-out” approach permits carriers to obtain customer approval to use, disclose or allow access to CPNI after prescribed “notification and consent” regulations are followed. Unfortunately, under the Commission’s “tentative conclusion” herein, such consents would be overridden if customers had joined, or subsequently join, a “do-not-call” list.

Currently, there are two types of “do-not-call” lists: carrier-specific lists maintained by carriers; and state-maintained lists in approximately thirty states. A third type of list – a national “do-not-call” list -- is in the process of being implemented by the Federal Trade Commission, and this Commission is considering herein a national list that would apply to entities subject to its jurisdiction, including the Concerned Telephone Companies. It is likely, therefore, that consumers soon will be able to join as many as three such lists to foreclose telemarketers from contacting them.

Only a few parties addressed the Commission's "tentative conclusion" in this proceeding. Most filings were directed at other issues, including adoption by the Commission of its own national "do-not-call" list. However, one party addressed the same issue raised by the Concerned Telephone Companies and concluded that "CPNI consent should trump general state or national do-not-call list designation" See "Reply Comments of AT&T Wireless, Inc.," dated January 31, 2003, at 26-27. The Concerned Telephone Companies agree, of course. As AT&T Wireless indicates, CPNI consent is approval by the customer to be marketed to by a specific company or companies and, in the absence of the customer's joining a *company-specific* do-not-call list, there is no basis to conclude that the customer's authorization does not cover *all* forms of carrier marketing, including telemarketing. Any contrary determination simply would be unsupportable. Additionally, any *specific* customer approval to be telemarketed to that is obtained by carriers during the CPNI "notification and consent" process surely must override any subscription by the customer to a state or national "do-not-call" list.

In view of the foregoing, the Commission should find and conclude that if a customer joins a state or national "do-not-call" list, that subscription does not revoke (or foreclose) the customer's consent with respect to allowing his/her CPNI to be used for telemarketing by the carrier.

Consistent with Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceedings.

Sincerely,

/s/ Donald J. Elardo

Donald J. Elardo

cc: William Maher
Jeffrey Carlisle
Carol Matthey
Jane Jackson
Kelli Farmer

Concerned Telephone Companies and Affiliates

Adams NetWorks, Inc.
Adams Telcom, Inc.
Adams Telephone Cooperative
Adams TelSystems, Inc.
Armour Independent Telephone Co.
Armstrong Telephone Company
Big Sandy Telecom Inc.
Bluestem Telephone Company
Bridgewater-Canistota Telephone Co.
Chautauqua & Erie Telephone Corporation
China Telephone Co.
Chouteau Telephone Company
Columbine Telecom Company
C-R Telephone Company
Ellensburg Telephone Company
Fremont Telecom
GTC Inc dba GT Com Inc.
HTC, Inc.
Kadoka Telephone Co.
Ligonier Telephone Company
Ligtel Communications
Maine Telephone Co.
Marianna & Scenery Hill Telephone Company
Mid-Century Telephone Company
Northland Telephone Company of Maine, Inc.
Odin Telephone Exchange Inc.
Peoples Mutual Telephone Company
Ringgold Telephone Company
Ringgold Telephone Long Distance
RTC Communications
RTC Internet
RTC TelVision
Sandhill Communications
Sandhill Telephone Cooperative
Sidney Telephone Company
Standish Telephone Co.
STE/NE Acquisition Corp. d/b/a Northland Telephone Company of Vermont
The Columbus Grove Telephone Company
Sunflower Telephone Company Inc. (Colorado)
Sunflower Telephone Company, Inc. (Kansas)
Taconic Telephone Corporation
The El Paso Telephone Company
The Orwell Telephone Company
Twin Lakes Telephone Cooperative
Union Telephone Company of Hartford
West River Telecommunications Cooperative
Yates City Telephone Company
YCOM Networks, Inc.